

# Teaching Values: A Dilemma

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I accept Roger Cramton's suggestion that we, as law professors, have some responsibility for our students' reflection about their own professional definition and values, about "who they are and what should be their future." But I think there is a dilemma in attempting to discharge this responsibility. The dilemma is apparent especially if, as I think Cramton intends, taking on the "ordinary religion of the law" means not only alerting our students to the value implications of the legal system they study, but also steering them to question a particular set of values (the "ordinary" set) and perhaps even to consider adopting an alternative set (i.e., our own set). The dilemma is that we cannot be value-neutral in our teaching—indeed, we should not be; but neither can we teach values—indeed, in the most usual sense of the word "teaching," we should not try.

Few would now seriously argue that we can be value-neutral in teaching the law. Not only does the law reflect values, but so also does any particular method of teaching law. What we choose to be issues worth studying, and how we arrange, as well as how we present, those issues, all convey value-laden messages about the law. Even a consistently bland presentation of "just what the law is, not what it should be" expresses important values about the law and the lawyer's relation to it—that the law is not to be judged as right or wrong; that values are not a significant component of the law (this would of course be factually wrong); and that values ought not enter our analysis of the law.

Not only can we not be neutral in teaching the law; we should not be either. This is the heart of Cramton's essay. Since we cannot be neutral, we merely mask our lack of neutrality by failing to address it. We all know (or are supposed to know) that subterfuge is bad business in legal education as elsewhere. The absence of explicit discussion about values, as Cramton points out, usually amounts to an affirmation of the "ordinary religion." Of course, in the right hands the failure to discuss values explicitly may act as cover for a more revolutionary set of professional values, but there is no reason (other than perhaps evening up the sides) that we should view this as any less suspect or insidious than unexpressed acclaim for the dominant views.

That we must "teach values" both because we cannot do otherwise and because it is right to do so, is the first half of the dilemma. The second half, to which I will give greater attention in these comments, is that neither can

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we nor should we try to teach values. That we cannot teach values is primarily a practical point, an assertion of lack of competence. Though our teaching cannot be value-neutral, we cannot set out to impose a particular set of values upon our students and succeed. Each student comes to law school with certain value preferences, expectations, and predispositions. These represent the convergence of many influences—cultural, familial, religious, political, and so on. These influences interact with the explicit messages and innuendos we convey to our students, often in unpredictable and unintended ways that should make us quite humble about the prospects for shaping our students in our own images of ourselves.

The limits of our ability to affect the viewpoints of our students can be seen perhaps most clearly in the case of discussions we lead in our classrooms on questions of “substantive law.” A student who is repulsed by abortion, for example, may react to a class discussion in which I invite critical responses to a “human life amendment” with an even stronger and more emotional antipathy to liberal abortion laws. The phenomenon operates in professional values and self-examination as well. A student attracted to the competitive struggle of adversary litigation may react to a discussion in which the professor has been critical of the “hired-gun” approach to lawyering by intensifying rather than seriously questioning her views about the duty of the lawyer to stand by a client the lawyer knows is about to commit an act that will harm others. Another may be offended by what he perceives as the inappropriate, “touchy-feely” nature of discussions designed to foster critical self-examination and thus reject any such examination, even that in which he might have engaged on his own without the efforts of the professor. My point is not just that the development of values is a continual process and that we can do very little to affect those of our students in the brief exposure we have to them; it is that because the potential influence we have is often unpredictable, our efforts may backfire.

Moreover, and this is the final piece of the dilemma I sketch here, we should not attempt to impose our values upon students. This is not because students should not learn values (and of course it is inevitable that they do, one way or the other). It is, rather, because however convinced we may be (and should be—I will get to this shortly) that our values are correct, we must be sensitive to how we came by them. Our views about ourselves and our profession, like those of our students, are the product of multiple and ever-changing influences. We arrive at these views as persons who occupy a particular time and place in history. The life stories of our students are different, and though we are a part of those stories, we presume too much when we attempt to make their stories over into our own. It is important, indeed, to the purpose Cramton describes that students come to understand their stories as just that—theirs. This is more than just the creation of appearances, such as when we try to create for our children the illusion of their autonomy so that they may learn confidence and self-esteem even though they are in fact powerless and dependent. We have not succeeded in teaching our students about who they are and how they will relate to their profession unless we have truly helped them to find their *own* answers to the questions Cramton asks. We cannot know what their answers will be

in advance; it is hard enough to know our own. But imposing our current versions of ourselves on our students perverts both our stories and theirs, and limits the potential richness and depth of a profession in which difference should be celebrated.

In sum, it is inevitable, yet wrong, that we teach values; and teaching values cannot, yet must, be done. Where do these contradictions leave us? Humbly searching and struggling. Like Cramton, I believe that there is a course between objectivism and relativism. I would describe it as follows: the teaching of law should be approached as if there were a right set of professional values, values we are obligated to search for (all values are not relative); but this search should be undertaken with an awareness that our way, like the ways chosen by our students, is not inevitable, verifiable, or timeless (values are not objective). Teaching students how to be lawyers, like teaching law, should be approached with the twin assumptions that there *are* right answers to be found, and that we cannot be sure that we have discovered them; in fact, we can only be sure that we have *not* defined them accurately and completely for all time.

Knowledge of the contradictions inherent in teaching values need not paralyze; it can empower. Knowing that our task is a delicate one helps us to be delicate. It keeps us focused both on exposing the contradictions and on making sense of them.

One of the most tempting ways of softening the dilemma I describe is to make the familiar distinction between inculcating values and demonstrating values by example. We might expect that if we try to avoid the extreme of inculcating values, perhaps we can steer clear of the apparent contradiction in the second half of the dilemma (that we cannot and should not teach values). Cramton effectively demonstrates "teaching by example" when he tries to answer the questions for himself that he wants us to ask of our students.

The distinction I suggest is not entirely satisfactory, for in an important sense teaching by example is but one form (albeit indirect) of inculcating values. Moreover, keeping the distinction is next to impossible in practice. We cannot avoid inculcating values any more than we can avoid setting examples.

The distinction between inculcating and demonstrating values, however, describes a difference in emphasis that may help us keep the dilemma in proper perspective. The dilemma I have described highlights the inevitability and necessity of values teaching, while warning of our practical and moral limits as we take our mission seriously. Cramton's method suggests one truth about teaching about values that straddles the dilemma: in directing our students to define themselves and their professional futures, our role is less to identify values authoritatively for our students than to explain our own well.